

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1215 of 1986

Date of decision: 1-10-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UTTAR GUJARAT JAIN VISHA OSWALSAMAJ TRUST

Versus

STATE OF GUJARAT

Appearance:

MR NAGIN N GANDHI for Petitioner
N. D. Gohil for Respondent No. 1
None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/10/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner - Uttar Gujarat Jain Visha oswal Samaj Trust - has filed this petition with the prayer that respondent No.1 be restrained from collecting education cess from the petitioner. Further prayer has been made for issue of an injunction restraining the Chief Officer, Palitana Municipality, respondent No.2, from collecting education cess from the petitioner.

Respondent No.2 has demanded Rs.2567.60 ps. towards education cess for the year 1985-86 from the petitioner. This court protected the petitioner by granting interim relief in terms of para 12(B).

2. One of the contentions raised by the counsel for the petitioner is that education cess cannot be levied on the Dharamshala. Secondly it has been contended that atleast education cess was not leviable on incomplete building. Counsel for the petitioner submitted that in the year 1985-86 the building of the Turst, i.e. Dharamshala, was incomplete and as such demand of education cess as per annexure-A was illegal. On the other hand the counsel for the respondent contended that the education cess is leviable on the property of the public trust.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I do not find any reply to the contention raised by the counsel for the petitioner that the building of the Trust in question was incomplete in the year 1985-86 and as such education cess could not have been levied on such property. In the reply only bald statement has been made that the building was not incomplete. It is a question of fact which has to be decided, more so when it is not the case of the respondents that even on incomplete buildings education cess could have been levied. The respondents should have given notice to the petitioner and only after giving an opportunity of hearing they could have passed order demanding education cess. In view of this fact I do not consider it proper to go on other questions raised by the counsel for the respondent that education cess is payable on building of the trust, may be a dharamshala. I consider it proper to send the matter back to respondent No.2 to decide the same afresh after giving notice and opportunity of hearing to the petitioner on the question whether building was complete or not in the year 1985-86. However, it will be open to the petitioners to raise all other points including the point that on dharamshala of a public trust education cess is not leviable.

4. In the result this special civil application succeeds and the same is allowed. The demand notice annexure-A issued by respondent No.2 is quashed and set aside. Respondent No.2 shall decide the matter afresh after giving notice and opportunity of hearing to the petitioner, within a period of three months from the date of receipt of certified copy of this order. Rule made absolute in the aforesaid terms. No order as to costs.

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CSM